IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7176 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SA BODLA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,MR GUNVANT B SHAH for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1,
MR SA DESAI for Respondent(s) : 2,3.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/03/2006

ORAL JUDGMENT

1.Rule. Learned AGP Ms. Reeta Chandarana waives service of notice of rule on behalf of the respondent no.1. The learned advocate Shri S.A. Desai waives service of

notice of rule on behalf of the respondents no.2 and 3. At the request of the learned advocates appearing for the parties, the matter is taken up for final disposal today.

2. In the present petition, the petitioner a retired employee of respondent no.2-University has challenged an action of the respondents in re-fixation of pay of the petitioner and to seek consequential recovery of the alleged overpayment already made. The said decision was conveyed to the petitioner by communication dated 22-03-2005. The petitioner has therefore, challenged the said communication.

3. The learned advocate for the petitioner submitted that similarly situated employees those who are in active service of the University had approached this Court by filing Special Civil Application No. 8421/2005 and allied matters. He pointed out that such group of petitions came to be disposed of by order dated 04-08-2005. He places a copy of the said order on record. He submitted that except the fact that the petitioner is a retired employee whereas the petitioner involved in the above-mentioned group of petitions were

in active service, there is no other material difference between two sets of cases.

4. The learned advocates appearing for the respondents are not in a position to dispute about the factual averments made by the learned advocate for the petitioner. The Learned Single Judge of this Court by an order dated 04-08-2005 passed in Special Civil Application No. 8421/2005 and allied matters was pleased to make following observations and consequential directions :

> "It is not in dispute that before passing the impugned order no hearing was given to the concerned petitioners. In that view of the matter, without going into the merits of the case, the State Government through Agriculture and Cooperation Department is directed to pass fresh order in accordance with law after hearing the concerned petitioners. In my view, before passing such order, which has got some civil consequences, hearing was required to be given to the petitioners as they were getting higher pay scale since considerable period. At the time of hearing, it will be open for the petitioners to argue that the State Government has no jurisdiction over the subject matter, however, on this point I am not expressing any opinion and it is entirely left to the State Government to decide whether it has any control over the affairs of the University and whether any prior approval was required to be taken by the university before upgrading the pay scale of its employees. This part is kept open for adjudication by the appropriate authority when it is raised before it by the petitioners. The State Government may inform the date of hearing to the University, which in turn will inform the petitioners about the same. It is assured by Mr.Supehia that his clients will cooperate with early hearing of the matter. It is also argued by

Mr.Supehia that the petitioners are submitting to the jurisdiction of the State Government without prejudice to their rights and contentions that the State Government has no authority to interfere with the affairs of the university.

As stated herein above, after hearing the petitioners appropriate order may be passed in accordance with law. If the ultimate order is against the petitioners, it will be open for the petitioners to challenge the same in accordance with law. Accordingly, these petitions are partly allowed by quashing and setting aside the impugned order which is at Annexure-B to the petition and the order lowering the pay scale of the petitioners is also set aside. If any action is taken in pursuance of the said order, the same is also quashed and set aside.

In view of aforesaid direction, these petitions are partly allowed. Rule made absolute accordingly with no order as to costs."

5.In the present case also since similar factual averments have been made by the petitioner, this petition is also disposed of by giving similar directions.

6.Accordingly the respondents are directed to pass fresh order in accordance with law after hearing the petitioner. For the above purpose, the impugned order is quashed. It will be open for the petitioner to urge before the Government that Government has no jurisdiction to direct the University to modify the pay scale. The said exercise may be completed expeditiously

and preferably within a period of three months from the date of receipt of a copy of this order. With these directions the petition is disposed of at this stage. If the order passed by the Government is adverse to the petitioner, it will be open for him to challenge the same in accordance with law. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi,J.)

(raghu)